

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 3:05 CR 781

-vs-

JOHN A. MARTINEZ, et al.,

Defendant.

AMENDED
MEMORANDUM OPINION
AND ORDER

KATZ, J.

This action is before the Court on Defendant's objections to the April 6, 2006 and April 14, 2006 Reports and Recommendations ("R & R") of United States Magistrate Judge Vernelis K. Armstrong. In accordance with *Hill v. Duriron Co.*, 656 F.2d 1208 (6th Cir. 1981), and 28 U.S.C. § 636(b)(1)(B) & (C), this Court has made a *de novo* determination of the Magistrate's findings and considered the Defendant's objections and the Government's response thereto. The Court finds that Defendant's objections as to both R & Rs are not well taken and will be overruled.

In the objections as to the April 6, 2006 R & R the Defendant has also raised an issue not addressed by the Magistrate Judge in her R & R; Defendant asserts that as a matter of law Count 2 should be dismissed because there was no showing from the testimony elicited at the hearing before the Magistrate Judge that the Defendant had either actual or *constructive* possession of the contraband found in Room 319. The issue of actual or constructive possession has been addressed by a subsequent filing of the Government (Doc. No. 359) filed April 24, 2006. The Government asserts, and the Court agrees, that the issue of possession, actual or constructive, is one best reserved for trial. Therefore, that objection of the Defendant will be overruled as well.

Having reviewed the exceptionally well-reasoned R & Rs of Magistrate Judge Armstrong, the Court will adopt the same in full and overrule the motions to suppress evidence or in the alternative to dismiss Counts I, II and III of the Indictment (Doc. Nos. 222, 223, 224 and 243).

IT IS SO ORDERED.

s/ David A. Katz
DAVID A. KATZ
U. S. DISTRICT JUDGE